IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Vinod Kumar Vs. Smt. Saroj & Ors.
S.B. CR. REVISION PETITION NO.366/2006

Against order dated 19.04.2006 passed by Addl. Chief Judicial Magistrate, Hanumangarh in Criminal Case No.129/2004.

DATE OF ORDER :: 29th November, 2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. M.K. Garg for petitioner.
Mr. Kanwal Deep Singh for complainant.

BY THE COURT:

Aggrieved by the order granting additional compensation to wife and children by learned Addl. Chief Judicial Magistrate, Hanumangarh in Criminal Case No.129/2004 while passing order on application under Sec.127 of the Cr.P.C., the husband of respondent No.1 and father of respondent No.2 & 3, who are respectively minor daughter and son, the petitioner, has preferred the present Revision Petition under Sec.397/401 of Cr.P.C.

It is not in dispute that petitioner was married with respondent No.1 Saroj on 13.03.1994 and out of their wedlock two children respondent No.1 & 2 Pooja and Gopal were born, however, the husband and wife could not remain unite and as it was alleged that despite giving dowry articles including Rs. 11,000 cash and one Chetak Scooter, the husband and his family members were not satisfied and were making demands for a motor cycle and Rs.31,000 in cash and for that were cruelly behaving with Saroj, a panchayat was held but later on after behaving properly for a short period, they again started ill-treating her and after beating she alongwith her daughter was turned out of the matrimonial house. A criminal case was filed but she was inducted back in the matrimonial home assuring that in future she would not be behaved cruelly, however, when the husband came to know about filing negative Final Report in the matter, he again turned her out of the house and thereafter she gave birth to a male child at her parental house. To maintain herself and the children, she moved an application under Sec.125 of the Cr.P.C. narrating the facts and circumstances so also giving details about the income sources of her husband. The husband refuted the

averments made by wife and prayed for rejection of the application with costs. After adducing evidence by parties, arguments were heard and the learned Addl. Chief Judicial Magistrate, Hanumangarh vide order dated 01.11.2000 allowed the application and directed payment of maintenance by petitioner Vinod Kumar Rs.500/- per month to each of the applicants i.e. in all Rs.1500/- per month. Thereafter, Smt. Saroj in order to meet out the uncontrollable increasing expenses on daily routine needs, study of children, medicine etc., by filing application under Sec.127 Cr.P.C. prayed for increase in the maintenance amount to Rs.2,500/- for each of the applicants. Vinod Kumar replied the application and requested to reject the application stating that the expenses have been shown exorbitantly high while Saroj herself earns Rs.10,000/- by running a Beauty Parlour and presently he is under financial crisis on account of closer of his shop and is serving as an accountant on a salary of Rs.2,000/- per month.

After hearing learned counsel for parties and taking into consideration the evidence led by the parties, oral as well as documentary, the learned Court of Chief Judicial Magistrate, Hanumangarh framed issue for its

determination as to whether after allowing maintenance by Court on 01.11.2000, is there any change in the circumstances, and if so, upto what extent the applicants are entitled to get the maintenance enhanced and ultimately came to the conclusion that it is just and proper that applicant Saroj is allowed additional maintenance allowance at the rate of Rs.1500/- per month and the two children each @ Rs.1000/- per month, irrespective of the earlier grant at the rate of Rs.500/- per month to each of the applicant-respondents and passed the order to that effect. Hence, the present petition is filed against revision of maintenance allowance.

The contention of the learned counsel is that trial Court has not properly appreciated the matter. It has been submitted that the condition of the petitioner is not such so as to afford monthly maintenance to the respondents to the tune of Rs.5,000/-. It is submitted that the trial Court committed severe illegality and without assigning any reason allowed the application of maintenance from the date of its filing whereas the application in absence of reasons was required to be allowed from the date of passing

order. The learned counsel submits that the maintenance allowed requires to be reduced substantially.

On the other hand, it has been submitted that the trial Court has assigned reasons while granting additional maintenance @ Rs.1500 per month to the respondent wife and Rs.1,000/- to each of the children.

I have considered the submissions made before me and perused the order impugned dated April 19, 2006 and the material available on record. It appears that as far as granting additional maintenance to the respondents is concerned, the same has been ordered from the date of application whereas in view of settled position of law normally the maintenance is to be allowed from the date of order and in case it is to be allowed from the date of application then the order should contain reasons for the same. In the instant matter, the trial Court has not assigned reasons why the enhanced amount of maintenance was ordered to be paid from the date of filing application. Thus, this part of the order calls indulgence of this Court and requires to be set aside.

Now, the question which arises for consideration is whether the trial Court has granted maintenance to the respondents adequately or it is at the higher side? In the evidence, led before the trial Court, petitioner examined 5 witnesses and tendered 5 documents in evidence and on behalf of the respondents, respondent No.1 Saroj appeared herself as AW1 and examined Gurdas as AW2 and also tendered 8 documents in evidence. The learned trial Court found that there is no dispute about the fact that Saroj is the wife of petitioner and Pooja and Gopal are his daughter and son, the children of the couple are studying in Shivalik Public School, Hanumangarh and the school fees of Pooja is Rs.300 per month and that of Gopal is Rs.200. The trial Court also found that respondent wife was not employed anywhere and it was the responsibility of the husband to maintain his wife and children. The trial Court further found that initial amount granted for maintenance in all Rs.1500/- was required to be maintained and in addition to that amount looking to the increase of price index etc respondents are entitled for enhancement in the maintenance allowance. As regards petitioner is concerned, he has stated that he is working as Salesman in Kakadiya

Departmental House and is getting Rs.2500 per month and for that a certificate was also produced. He also stated that he took a loan of Rs.2,78,000 from Bank and the payment of the loan instalment is also made and substantial amount is also being spent by him on the treatment of his old mother. Other witnesses examined on behalf of the petitioner though have stated that the respondent wife was employed somewhere else but no satisfactory evidence could be produced. The trial Court found that the maintenance granted earlier was being paid regularly by the petitioner, therefore, simply taking plea of enability to maintain wife and children cannot be accepted. The trial Court further found that petitioner was neglecting his wife and children, therefore, they are entitled to claim maintenance at the enhanced rate.

After carefully examining the evidence led by both sides and taking into consideration the reasonings given by the trial Court and the arguments advanced by respective counsel, in my humble opinion, the grant of maintenance being at a little higher side, the same requires to be reduced to Rs.4,000/- per month in its totality i.e.

Rs.2,000/- to the wife and Rs.1,000/- each to the two children.

Accordingly, the revision petition is partly allowed and it is directed that respondent wife Saroj shall now be entitled to the enhanced maintenance at the rate of Rs.2,000/- and children Pooja and Gopal Rs.1,000 each, in total Rs.4,000/- per month from the date of the impugned order granting additional maintenance. The order impugned stands modified to the above extent and the earlier order granting maintenance stands merged in this order.

(SATYA PRAKASH PATHAK) J.

/jpa